IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.7662 of 2005
In
Criminal Appeal No.1083 of 2005

Kadir Ahmmad @ Mulla Bashir
Ahmed Ansari & anr. Aplicants

Vs.

The State of Maharashtra Respondent

Mr.B.J.Sarwade for applicants.
Mr.D.S.Mhaispurkar, APP for State.

CORAM: B.H.MARLAPALLE & SMT.R.S.DALVI,JJ.

February 23, 2006.

P.C.

. This is an application for being released on bail during the pendency of Criminal Appeal no.1083 of 2005 against the order of conviction and sentence passed by the learned 5th Ad-hoc Addl. Sessions Judge, Sewree, Mumbai in Sessions Case No.415 of 2003 and by the said order dated 5/10/2005 the applicants, who are accused nos.2 and 3 originally, have been convicted and sentenced for an offence punishable under Section 302 read with Section 34 of IPC. The State has filed affidavit-in-reply opposing the bail application and more particularly pointing out that at the residential address enquiries were made and it was found out that nobody in the locality was knowing the applicants nor any of their relations were seen

staying at the addresses in the concerned slum area. To meet this opposition the applicants have placed on record the affidavits of Mr.Sadik Khan Sabid Ali and Mr.Mohammad Yamin Abdul Karim Ansari undertaking to stand as sureties for the applicants if they are released on bail.

. The incident had taken place in the wee hours of 20/3/2003 when Prakash Tati was done to death. Three accused were arrested and accused no.1 being a juvenile, his trial was separated and continued against the present applicants. The learned Ad-hoc Addl. Sessions Judge considered the evidence of PW 5, the Medical Officer and noted that the deceased was killed by strangulation/throttling. the trial Court also recorded a finding of last seen together i.e. the deceased being in the company of the accused in the night of 19/3/2003 as well as in the wee hours of 20/3/2003 on the basis of the evidence of PW 3, PW 9, PW 10 and that the van bearing Registration No.MAP-7723 was repaired by PW 4 - Amarram Rajbhar, a mechanic at Asalpa village, Ghatkopar and it was lying in his garage from 20/3/2003 to 25/3/2003. The learned Judge of the trial Court also considered the evidence of PW 11, PW

15, PW 16 and PW 18 and recorded his findings in para 44 of the impugned order of conviction and sentence regarding the prosecution having proved its case on the basis of the circumstantial evidence. The learned counsel for the applicants has taken us through the depositions of PW 3, PW 4, PW 9, PW 10 as well as the Medical Officer, PW 5 and tried to show some contradictions / omissions and in any case these alleged deficiencies do not impress us for the applicants being released on bail during the pendency of Criminal Appeal No.1083 of 2005 by suspending the order of sentence under Section 389 of Cr.P.C.

. The application is, therefore, rejected.

(SMT.R.S.DALVI,J.) (B.H.MARLAPALLE,J.)